



PUBLIC NOTICE

US Army Corps
of Engineers
New York District
Jacob K. Javits Federal Building
New York, N.Y. 10278-0090
ATTN: Regulatory Branch

Public Notice Number: 2006-00619-YN
Issue Date: June 30, 2006

PUBLIC INFORMATION ANNOUNCEMENT STORM DAMAGE REPAIR

Between June 25 and June 30, 2006, significant amounts of rain fell upon upstate New York resulting in severe flood damage and as a result, the Governor of the State of New York declared the following thirteen counties in a state of emergency: Broome, Cortland, Tioga, Chenango, Delaware, Montgomery, Schoharie, Otsego, Oneida, Herkimer, Orange, Sullivan and Ulster. It is anticipated that owners of damaged property will want to conduct repair activities in the near future. This advisory is intended to inform property owners of the U.S. Army Corps of Engineers (Corps) permit requirements for storm damage repairs.

The Corps has Federal jurisdiction over activities that include dredging or construction in or over any navigable waters of the United States, certain excavation activities within, and the placement of dredged or fill material into waters of the United States (including wetlands), or the accomplishment of work affecting the course, location, condition or capacity of such areas. Such activities may require a Department of the Army permit, in accordance with Title 33 of the Code of Federal Regulations, Parts 320-330. Please note that waters of the United States also include intermittent streams, natural drainage courses, and wetlands which meet applicable Federal criteria, regardless of their size.

The purpose of this Public Information Announcement is to describe the Corps Nationwide General Permit Program and to list current nationwide permits which are relevant to repair activities. A nationwide permit is a form of permit which authorizes a category of activities throughout the nation. Nationwide permits are designed to allow work in these categories to occur with little, if any, delay or paperwork. However, the nationwide permits are valid **only** if the conditions applicable to the nationwide permits are met. Please note that just because a condition cannot be met does not necessarily mean that the activity cannot be authorized, but rather that a formal application will have to be made to the Corps for authorization by an individual permit. The nationwide permits apply only to Department of the Army regulatory programs. Other Federal, state or local authorization(s) may be required for an activity. **It is imperative that the conditions and the management practices be followed explicitly.**

The current nationwide permits are prescribed in the Federal Register dated January 15, 2002 (67 FR 2020). Copies of the Nationwide General Permits are available from the Corps District office and via the internet at:

New York District:

<http://www.nan.usace.army.mil/business/buslinks/regulat/permits/index.htm>

Buffalo District:

http://www.lrb.usace.army.mil/regulatory/upd_nwp_2002.htm

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Enclosed with this public notice is a map identifying the geographic boundaries of the two Corps Districts in New York State. Please note that for the counties declared in a state of emergency, Delaware, Montgomery, Schoharie, Otsego, Ulster, Orange and Sullivan are located within the New York District geographic boundaries; while the counties of Broome, Cortland, Tioga, Chenango, Oneida and Herkimer are within the geographic jurisdiction of the Buffalo District Corps of Engineers.

Inquiries to the New York District can be made at the address noted above and telephone numbers listed at the end of this notice, while the Buffalo District can be contacted at the following address and telephone number:

Regulatory Branch
US Army Corps of Engineers
Buffalo District
1776 Niagara Street
Buffalo, New York 14207
(716) 879-4330
<http://www.lrb.usace.army.mil/regulatory/>

Based on our experience with reviewing past remedial efforts, the most common activities include the repair, rehabilitation, and replacement, in-kind and in-place, of currently serviceable structures or fills or those that were serviceable at the time of the storm or flood event. Section 404 of the Clean Water Act specifies that some discharges of fill material associated with the reconstruction of recently damaged parts of currently serviceable structures (such as dikes, dams, groins, riprap, breakwaters, causeways and bridge abutments) may be exempt from Corps regulations. This exemption does not include any modifications that change the character, scope or size of the original fill design. In addition, Corps authorization may be required if the work would take place in a navigable water of the United States. Emergency reconstruction must occur within a reasonable period of time after damage has occurred in order to qualify for this exemption. **You are advised to contact the Corps District office noted in this advisory to determine if your proposed activity falls under this exemption.**

Many activities may be authorized by Nationwide Permit (NWP) Number 3. This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the exemption described above; the discharge of dredged or fill material, including excavation, into all waters of the United States to remove accumulated sediments and debris within existing structures (i.e. bridges, culverted road crossings, water intake structures, etc.) and within 200 feet in any direction from the structure, provided the removal is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built; the placement of riprap within waters of the United States that is used for the direct purpose of protecting or ensuring the safety of the structure, provided it is the minimum necessary to fulfill its purpose; and the discharge of dredged or fill material, including excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in waters of the United States.

In addition to the general conditions, NWP Number 3 is also subject to the following restrictions and conditions within the **New York District's** geographic boundaries:

1. For activities involving the removal of accumulated sediments and debris in the vicinity of existing structures to restore the waterway to previously existing depths, the applicant must provide evidence of such depths. If this information is not available, the applicant must provide evidence of the existing depths immediately outside of the proposed work area.

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2. The removal of accumulated sediments and debris is limited to 100 feet upstream and 100 feet downstream of the structure (a reduction in the 200 feet listed above).

3. Any proposed repair, rehabilitation, or reconstruction of existing bulkheads that extends more than 18 inches waterward from the existing bulkhead will require notification to the District Engineer in accordance with Nationwide Permit General Condition Number 13.

4. For activities involving pouring of concrete into waters of the United States, the permittee shall employ watertight forms. The forms shall be dewatered prior to the pouring of concrete.

5. Maintenance activities involving discharges of dredged or fill material into waters of the United States for the purpose of creating temporary structures to facilitate work such as groins, work pads, laydown areas, cofferdams, staging areas, or similar fills will require notification to the District Engineer in accordance with Nationwide Permit General Condition Number 13.

6. No in-stream work shall occur during predicted periods of high flow.

7. The permittee shall take appropriate measures, as needed, to ensure that any return flow into waters of the United States complies with all pertinent New York State Water Quality Standards, as identified by the New York State Department of Environmental Conservation.

8. The permittee shall implement construction best management practices (BMPs) to eliminate or minimize erosion, migration of sediments, and adverse environmental impacts to the maximum extent practicable.

9. No activity can cause the loss of bogs or fens as determined by the New York District Corps of Engineers.

10. All applications shall include a description of the proposed construction practices that would be implemented to perform the proposed work and a description of the reasonable foreseeable direct and indirect effects to waters of the United States of the proposed construction practices.

In addition to the general conditions, NWP 3 is also subject to the following restrictions and/or conditions within the **Buffalo District's** geographic boundaries:

1. The Pre-Construction Notification (PCN) (Nationwide Permit General Condition No. 13 - Notification) for activities involving the removal of accumulated sediments and debris in the vicinity of existing structures to restore the waterway to previously existing depths, must include evidence of such depths. If this information is not available, the PCN must include evidence of the existing depths immediately outside of the proposed work area.

2. A PCN is required for any proposed repair, rehabilitation, or reconstruction of existing bulkheads that extend waterward more than 18 inches from the existing bulkhead. The PCN must include justification for a waterward extension exceeding eighteen (18) inches, such as geologic conditions, engineering requirements, etc.

3. For activities involving pouring of concrete into waters of the United States, the permittee shall employ watertight forms. The forms shall be dewatered prior to the pouring of concrete.

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4. A PCN is required for maintenance activities that involve discharges of dredged or fill material into waters of the United States for the purpose of creating temporary structures to facilitate work such as groins, work pads, laydown areas, cofferdams, staging areas, or similar fills.

It should be noted that NWP Number 3 does not authorize maintenance dredging for the primary purpose of navigation and beach restoration, new stream reconfiguration or channelization projects, or the replacement of lands lost through gradual erosion processes.

In addition to the available NWP's, the **Buffalo District** has activated Regional General Permit RP 99-000-1 for Emergency Dredging and Discharge Authorization following major storm events. The details of this Regional General Permit can be found at:

<http://www.lrb.usace.army.mil/regulatory/rp/rp99-000-1.pdf>

It is recommended that you retain for your records a copy of permits, photographs, drawings, surveys, etc., for the structures or fill being repaired, replaced or rehabilitated and/or any other documentation showing that the structure or fill was serviceable immediately prior to the flooding that occurred between June 25 and June 30, 2006, or at the time the work was done. Increases in the size of a structure or fill are generally not authorized by NWP Number 3. If an increase in the size of a structure or fill, or if additional structures or fill are proposed, it is requested that the appropriate Corps District office be contacted to determine which type of permit would be required for the modified proposal.

Additional NWP's which may be applicable to proposed remediation efforts include:

NWP Number 13 - Bank Stabilization

NWP Number 18 - Minor Discharges

NWP Number 19 - Minor Dredging

NWP Number 27 - Stream and Wetland Restoration Activities

NWP Number 33 - Temporary Construction Access and Dewatering

Please thoroughly review the terms and conditions of the NWP's as well as any applicable Corps regional conditions and those added by the State of New York. If you are uncertain if the activity you propose qualifies for a NWP, or whether additional restrictions or conditions have been placed on a particular NWP, you are advised to contact the respective Corps District office **prior** to the commencement of work. For projects that involve the discharge of dredged or fill material into waters of the United States, a Water Quality Certification (WQC) is required from the New York State Department of Environmental Conservation (NYSDEC). For projects that are either in or affecting the coastal zone, a Coastal Zone Management (CZM) consistency concurrence is required from the New York State Department of State (NYSDOS). A programmatic WQC and/or CZM consistency concurrence was issued for some NWP's; for those NWP's a project specific WQC/CZM authorization is not required. Please contact this office or visit our website to see which NWP's have already received the required WQC and/or CZM consistency concurrence from the NYSDEC and the NYSDOS, respectively. The website for this is:

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New York District:

<http://www.nan.usace.army.mil/business/buslinks/regulat/index.htm#PNotices>

Buffalo District:

http://www.lrb.usace.army.mil/regulatory/upd_nwp_2002.htm

It is noted that authorization by a Corps NWP does not obviate the need for state or local permits, as required by law. It is recommended that you check your regional office of the NYSDEC and your local County, Town, City and/or Village for their permit requirements.

In cases where the proposed work does not meet the requirements of a NWP and there is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action is not undertaken within a time period less than the normal time needed to process a permit application under standard procedures, the District can process an application for a permit under emergency procedures stated in Title 33 of the Code of Federal Regulations, Part 325.2(e)(4). You are **required** to contact the respective Corps of Engineers District office if you feel your activity qualifies for the emergency procedures.

For additional information regarding Corps permit requirements, please contact the New York District, Albany Field Office at (518) 270-0588, 0589, or our New York City office at (917) 790-8411.

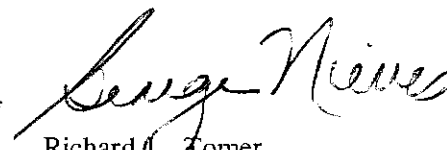
It is requested that you communicate the foregoing information concerning the activity to any persons known by you to be interested and who did not receive a copy of this notice.

For more information on **New York District** Corps of Engineers programs, visit the website at

<http://www.nan.usace.army.mil>

For more information on **Buffalo District** Corps of Engineers programs, visit the website at

<http://www.lrb.usace.army.mil/regulatory/>

For 
Richard C. Tomer
Chief, Regulatory Branch

Enclosure:
Map Showing Geographical Boundaries of Corps Districts in New York State

New York State
Department of Environmental Conservation

Buffalo District - Regions 6,7,8,9

